IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 18TH JANUARY 2007 / 28TH PAUSHA 1928

WP(C).No. 2088 of 2007(W)

OS.136/2006 of SUB COURT, SULTHAN BATHERY

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PETITIONER:

T. IBRAYI, AGED 35 YEARS,
S/O.AHAMMED, RESIDING AT THIRIKKODAN HOUSE,
NALLOORNAD AMSOM, PULIKKAD DESOM,
POST NALLOORNAD, MANANTHAVADY TALUK.

BY ADV. SRI.V.V.SURENDRAN
SRI.P.A.HARISH

RESPONDENTS:

K.N. MADHUSOODANAN, S/O.NARAYANAN,
RESIDING AT KARIYATTUPARAMBIL HOUSE,
NALLOORNAD AMSOM, PULIKKAD DESOM,
POST NALLOORNAD, MANANTHAVADY TALUK.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.2088 OF 2007

DATED THIS THE 18th DAY OF JANUARY, 2007

JUDGMENT

Petitioner is plaintiff and respondent defendant in O.S.136/06 on the file of Sub Court, Sulthanbathery. Petitioner filed the suit seeking a decree for specific performance of an agreement for sale and permanent prohibitory injunction restraining respondent from alienating plaint schedule property. Petitioner filed an application under Order XXXI Rule 1 of Code of Civil Procedure restraining respondent from alienating the property. Respondent in turn filed an application directing petitioner to deposit the balance sale consideration. Under Ext.P8 order, learned Sub Judge allowed the application and directed petitioner to deposit the amount within two weeks from 20.11.06. Case of petitioner is that a portion of the property agreed to be sold has been orally alienated by respondent and boundaries were also modified and therefore petitioner had filed Ext.P4 application for appointment of a Commission and without hearing petitioner, it appears that orders have been passed, dismissing the application and inspite of filing copy application for certified copy of the order, it was not furnished. Though petitioner filed Ext.P9 petition

to grand extension of time to deposit it was also dismissed. This petition is filed under Article 227 of Constitution of India for a direction to learned Sub Judge to issue certified copy of the order applied for in C.A.928/06. Direction was also sought to learned Sub Judge to reconsider Exts.P4 and P9 applications and to quash Ext.P8 order.

2. Learned Counsel appearing for petitioner was heard.

3. Learned Counsel appearing for petitioner pointed out that along with dismissal of the application for appointment of commissioner, Ext.P9 application filed for extension of the time fixed under Ext.P8 order was also dismissed and copies of the orders are not furnished.

4. Arguments of learned Counsel appearing for petitioner was that petitioner is prepared to pay the amount payable by petitioner for getting specific performance of the agreement but as a portion of the property has been transferred by respondent he is not liable to deposit the entire amount. It was argued that to prove the case that boundaries were modified petitioner applied for appointment of a Commission, which was dismissed by the Court without hearing petitioner and inspite of submitting copy application, the certified copy of the order was not granted and Sub Judge may be directed to issue the copy without delay.

5. Learned Sub Judge is directed to issue the certified copy of the order applied for by petitioner in C.A.928/06 as expeditiously as possible and in any event within two weeks from the date of receipt of copy of this judgment.

6. Though learned Counsel appearing for petitioner challenged Ext.P8 order, I do not find any reason to interfere with the said order in exercise of the extraordinary jurisdiction of this Court under Article 227 of Constitution of India. When petitioner seeks an order of temporary injunction restraining respondent, the owner of the property from transferring his property, on the ground that there is an agreement for sale and petitioner is entitled to get a sale deed executed in his favour in specific performance of the agreement for sale, there is no reason to interfere with the order of the trial court directing petitioner to deposit the balance sale consideration.

7. Learned Counsel appearing for petitioner then submitted that petitioner may be granted three weeks time to deposit the amount and when petitioner deposits the amount it may be invested in a fixed deposit in a nationalised bank.

8. Learned Sub Judge is directed to grand three weeks time to petitioner to deposit the amount as directed in Ext.P8 order from today. On such deposit, Sub Judge to invest the amount in

fixed deposit in one of the nationalised banks. The deposit shall not be withdrawn before the disposal of the suit.

Petition is disposed accordingly.

M.SASIDHARAN NAMBIAR,JUDGE

Acd